

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK ASKEW, )  
Plaintiff ) Civil Action  
v. ) No. 11-cv-04003  
R.L. REPPERT, INC.; )  
RICHARD L. REPPERT; )  
R.L. REPPERT, INC. EMPLOYEES )  
PROFIT SHARING 401(k) PLAN; and )  
R.L. REPPERT, INC. MONEY )  
PURCHASE PLAN (DAVIS BACON PLAN), )  
Defendants )

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R.L. REPPERT, INC.; )  
RICHARD L. REPPERT; and )  
R.L. REPPERT, INC. EMPLOYEES )  
PROFIT SHARING 401(k) PLAN, )  
R.L. REPPERT, INC. MONEY )  
PURCHASE PLAN (DAVIS BACON PLAN), )  
Third-Party Plaintiffs )  
v. )  
CALIFORNIA PENSION ADMINISTRATORS & )  
CONSULTANTS, INC., )  
Third-Party Defendants )

**VERDICT**

NOW, this 30<sup>th</sup> day of September, 2016, upon

consideration of the non-jury trial held February 29, 2016 and March 1 and 2, 2016; upon consideration of the testimony and evidence adduced at trial; upon consideration of the pleadings

and record papers; upon consideration of the parties' post-trial submissions; and for the reasons expressed in the accompanying Adjudication, including Findings of Fact, Conclusions of Law, and Discussion:

I find in favor of defendants R.L. Reppert, Inc.; Richard L. Reppert; the R.L. Reppert, Inc. Employees Profit Sharing 401(k) Plan; and the R.L. Reppert, Inc. Money Purchase Plan (Davis Bacon Plan), against plaintiff Derrick Askew on that part of Count One of plaintiff's Class Action Complaint alleging that defendant R.L. Reppert, Inc. improperly withheld any other custodial agreements (apart from its agreement with the Nationwide Trust Company, FSB) in violation of 29 U.S.C. §§ 1024(b)(4), 1132(c)(1).

I find in favor of plaintiff Derrick Askew against defendant R.L. Reppert, Inc. in the amount of \$15,959.00 on that part of Count One of plaintiff's Class Action Complaint requesting penalties pursuant to 29 U.S.C. §§ 1024(b)(4), 1132(c)(1) for defendant R.L. Reppert, Inc.'s failure to timely produce plan documents for the periods December 6, 2008 to October 2, 2009, and May 17, 2012 to January 1, 2015.<sup>1</sup>

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<sup>1</sup> All other parts of Count One of plaintiff's Class Action Complaint were dismissed by my Order and Opinion dated February 4, 2016 and filed February 5, 2016 granting in part and denying in part both plaintiff's and defendants' cross-motions for summary judgment.

I find in favor of plaintiff Derrick Askew against defendant R.L. Reppert, Inc. on that part of Count Four of plaintiff's Class Action Complaint alleging that defendant R.L. Reppert, Inc. failed to comply with the audit requirement set forth in 29 U.S.C. § 1023(a)(3)(A) with respect to the 401(k) Plan for the plan years 2008 through 2011.<sup>2</sup>

I find in favor of third-party defendant California Pension Administrators & Consultants, Inc. ("CalPac") against defendants and third-party plaintiffs on Count One of their Amended Third Party Complaint, alleging that CalPac breached its Client Service Agreement with defendant R.L. Reppert, Inc.

I find in favor of third-party defendant California Pension Administrators & Consultants, Inc. against defendants and third-party plaintiffs on Count Two of their Amended Third Party Complaint, alleging that CalPac knowingly or recklessly misrepresented the plan administration and recordkeeping services they would provide to defendant R.L. Reppert, Inc.

IT IS ORDERED that judgment is granted in favor of defendants R.L. Reppert, Inc.; Richard L. Reppert; the R.L. Reppert, Inc. Employees Profit Sharing 401(k) Plan; and the R.L. Reppert, Inc. Money Purchase Plan (Davis Bacon Plan), against

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<sup>2</sup> All other parts of Count Four of plaintiff's Class Action Complaint were dismissed by my Order and Opinion dated February 4, 2016 and filed February 5, 2016 granting in part and denying in part both plaintiff's and defendants' cross-motions for summary judgment.

plaintiff Derrick Askew on that part of Count One of plaintiff's Class Action Complaint alleging that defendant R.L. Reppert, Inc. improperly withheld any other custodial agreements (apart from its agreement with the Nationwide Trust Company, FSB) in violation of 29 U.S.C. §§ 1024(b)(4), 1132(c)(1).

IT IS FURTHER ORDERED that judgment is granted in favor of plaintiff Derrick Askew against defendant R.L. Reppert, Inc. in the amount of \$15,959.00 on that part of Count One of plaintiff's Class Action Complaint requesting penalties under 29 U.S.C. §§ 1024(b)(4), 1132(c)(1) for defendant R.L. Reppert, Inc.'s failure to timely produce plan documents for the periods December 6, 2008 to October 2, 2009 and May 17, 2012 to January 1, 2015.

IT IS FURTHER ORDERED that judgment is granted in favor of plaintiff Derrick Askew against defendant R.L. Reppert, Inc. on that part of Count Four of plaintiff's Class Action Complaint alleging that defendant R.L. Reppert, Inc. failed to comply with the audit requirement set forth in 29 U.S.C. § 1023(a)(3)(A) with respect to the 401(k) Plan for the plan years 2008 through 2011.

IT IS FURTHER ORDERED that judgment is granted in favor of third-party defendant California Pension Administrators & Consultants, Inc. against defendants and third-party plaintiffs, R.L. Reppert, Inc.; Richard L. Reppert; the R.L.

Reppert, Inc. Employees Profit Sharing 401(k) Plan; and the R.L. Reppert, Inc. Money Purchase Plan (Davis Bacon Plan), on Counts One and Two of their Amended Third Party Complaint.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in favor of plaintiff Derrick Askew against defendant R.L. Reppert, Inc. in the amount of \$15,959.00.

IT IS FURTHER ORDERED that defendant R.L. Reppert, Inc. shall have until March 30, 2017 to engage an independent qualified public accountant to conduct an examination of the financial statements, and of other books and records, of the 401(k) Plan, consistent with the requirements of 29 U.S.C. § 1023(a)(3)(A) for the plan years 2008 through 2011 and to amend the annual reports submitted on behalf of the 401(k) Plan if necessary.

IT IS FURTHER ORDERED that the parties shall have until on or before November 30, 2016 to file a petition for attorney's fees and costs pursuant to 29 U.S.C. § 1132(g).

IT IS FURTHER ORDERED that the oral motion made at the close of defendants' and third-party plaintiffs' case-in-chief at trial on March 2, 2016 by third-party defendant California Pension Administrators & Consultants, Inc. for judgment on

partial findings in accordance with Rule 52(c) of the Federal Rules of Civil Procedure<sup>3</sup> is dismissed as moot.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter closed for statistical purposes.

BY THE COURT:

  
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James Knoll Gardner  
United States District Judge

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<sup>3</sup> Notes of Testimony of the non-jury trial conducted on March 2, 2016 in Allentown, Pennsylvania, styled "Transcript of Non-Jury Trial - Day 3 of 3 Before the Honorable James Knoll Gardner[,] United States District Judge" at pages 98-103.